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***Sent via Facsimile and  
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Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
(202) 219-3923

***Re: Education Finance Reform Group  
MUR No. 5996***

Dear Mr. Jordan

This letter is submitted on behalf of Education Finance Reform Group ("EFRG") in response to the complaint filed by the Democratic Congressional Campaign Committee ("DCCC"), which has been designated as MUR No. 5996. A review of the actual facts, rather than the DCCC's speculation or conjecture, should convince the Commission that the complaint lacks merit and should be dismissed.

Contrary to the unfounded assertions of the DCCC, the television advertisement paid for by EFRG does not violate the Federal Election Campaign Act ("Act"). The advertisement did not expressly advocate the election of State Senator Tim Bee, a current candidate for Arizona's 8th Congressional District. The advertisement was not an illegal in-kind contribution. Indeed, it was not coordinated with Mr. Bee or anyone affiliated with his campaign.

The advertisement was not related to any congressional campaign, but was advocating an issue. As such, it should not be considered as a campaign contribution. Moreover, under the circumstances, EFRG was not required to provide any disclaimers with the advertisement. In summary, the DCCC contends that the law has been violated in many ways. The truth is that EFRG's actions and intent are being inaccurately portrayed and misconstrued. The Commission should not find any reason to believe that the law has been violated.

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Attorneys of the Firm are licensed to practice in Arizona, New Mexico, Nevada, the Colorado River Indian Community, Gila River Indian Community, and the Navajo, Hualapai, Hopi, Tohono O'odham, San Carlos Apache, Yavapai and White Mountain Apache courts.

29044254502

Jeff S. Jordan, Esq.  
June 9, 2008  
Page 2

## **I. Factual Background**

EFRG is the creation of an inter-governmental agreement between several Arizona school districts. It is not formally organized as a corporation. Its essential purpose is to act as a means for the participating school districts to combine their resources and efforts to lobby the Arizona legislature for changes in teacher performance pay. The fruit of EFRG's efforts was Senate Bill 1488, also known as the Teacher Performance Pay Program, which was sponsored by Tim Bee, the President of the Arizona Senate.

EFRG accredits the efforts and leadership of Senator Bee with the fact that Senate Bill 1488 was successfully passed in the Senate (See Email from Mr. Baker to Senator Bee, dated March 20, 2008, attached as Exhibit "A", Email from Ms. Duger to Multiple Recipients, dated March 20, 2008, attached as Exhibit "B"). In an effort to bring greater attention to Senate Bill 1488, as it still had to go to the Arizona House of Representatives, EFRG decided to purchase a television advertisement. The purpose of the advertisement was 1) to advance the lobbying effort for Senate Bill 1488 to be passed in the House, 2) to thank Senator Bee for his sponsorship of Senate Bill 1488 and his support for education, and 3) to increase public awareness and support for Senate Bill 1488.

EFRG did not coordinate the production or broadcast of the television advertisement with Senator Bee, anyone acting on his behalf, or the Republican Party. The television advertisement was a unilateral decision and action by EFRG. To the best of EFRG's knowledge, Senator Bee had no knowledge of the television advertisement until it was made public.

In its complaint, the DCCC relies on a newspaper article that purportedly quotes Richard Cronnet, the President of the Vail Education Association ("VEA") who was also in the advertisement, to argue that the advertisement was intended to advocate Senator Bee for Congress. According to Mr. Cronnet, his statements were taken out of context by the Arizona Daily Star (See Email from Mr. Cronnet to Mr. Baker, dated April 8, 2008, attached as Exhibit "C"). Mr. Cronnet was asked if he knew whether Senator Bee would use the advertisement for his congressional campaign. Mr. Cronnet, speaking for himself—not EFRG or the VEA—said that he *assumed* that he might, but that his intent in participating in the advertisement was to express thanks for Senate Bill 1488.

29044254503

29044254504

Jeff S Jordan, Esq  
June 9, 2008  
Page 3

It is important to note that Senator Bee was not the only state senator that was given public recognition in the course of promulgating Senate Bill 1488 Senator Paula Aboud, who happens to be a Democrat, was also publicly thanked for her support of the Teacher Performance Pay Program through two mailers (See Mailers, attached as Exhibit "D") In other words, EFRG's efforts were not partisan The advertisements had nothing to do with federal elections They had everything to do with increasing teacher compensation in Arizona

## **II. Legal Analysis**

### **A. The Television Advertisement Consists Of Issue Advocacy And Does Not Expressly Advocate For The Election of Senator Bee.**

Contrary to the allegations of the DCCC, the television advertisement does not expressly advocate Senator Bee's federal election The Commission's regulations establish two bases for establishing that a communication expressly advocates 11 C F R § 100 22(a) requires the use of phrases, such as "vote for" or "support " It is quite apparent that the television advertisement does not contain any language comparable to the illustrative phrases in Section 100 22(a) Indeed, there is absolutely no explicit directive to take electoral action

The DCCC points to Section 100 22(b), which applies when the communication "taken as a whole and with limited reference to external events could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) " 11 C F R § 100 22(b)

The remaining language of Section 100 22(b) is conveniently omitted from the DCCC's complaint This regulation continues with, " because-(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) " *Id* (emphasis added)

There are several flaws with the DCCC's position First, the television advertisement does not contain any "electoral portion" let alone one that is "unmistakable, unambiguous, and suggestive of only one meaning " Second, there is nothing in the television advertisement that suggests that it is advocating Senator Bee's election to Congress It relates to Senator Bee's Senate Bill 1488 and increased teacher compensation The television advertisement constitutes

Jeff S. Jordan, Esq.  
June 9, 2008  
Page 4

issue advocacy. This is especially the case when one considers the television advertisement "with limited reference to external events." The DCCC improperly refers to several external events in its effort to imply that the television advertisement was express advocacy.

Finally, reasonable minds could differ on whether thanking Senator Bee for sponsoring Senate Bill 1488, which increases the fairness of teacher compensation in southern Arizona, "could only be interpreted as containing advocacy of" the federal election of Senator Bee. Thus, Section 109 22(b) has no application.

The DCCC's analogy to the 2004 Rick Renzi slogan is a red herring. Mr. Renzi was an incumbent; the slogan was disseminated within a couple of months of the general election, and it really could only be interpreted as an express advocacy of Mr. Renzi. Such is not the case in this instance. In light of the substance of the advertisement (Senate Bill 1488 and teacher compensation), the timing of the advertisement (several months before any election and while Senate Bill 1488 was before the House), as well as the intended purpose of it, the Commission should conclude that the television advertisement did not expressly advocate Senator Bee's election to Congress.

**B. The Television Advertisement Was Not An Unlawful In-kind Campaign Contribution Because It Was Not A Coordinated Communication.**

The DCCC's allegation that EFRG made an unlawful, in-kind contribution is erroneous because the DCCC assumes, without any evidence, that there was a coordinated communication. The regulations define "coordinated" as "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate," the candidate's committee, or a political party committee. See 11 C.F.R. § 109.20(a). A coordinated communication exists when the communication (1) is paid for by a person other than the candidate, (2) satisfies at least one of the content standards, and (3) satisfies at least one of the conduct standards. See 11 C.F.R. § 109.21(a).

Thus, even before one arrives at the in-kind contribution provision of Section 109 21(b), argued by the DCCC, it must be shown that a coordinated communication existed. Here, the evidence shows that there was no coordinated communication. While EFRG did pay for a television advertisement, this communication did not satisfy any of the content or conduct standards listed in Sections 109 21(c)-(d).

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Jeff S. Jordan, Esq.  
June 9, 2008  
Page 5

The television advertisement is not "plainly a contribution to" Senator Bee. The DCCC relies entirely on speculation, rather than actual evidence, to claim that Senator Bee was involved in the television advertisement. EFRG denies that Senator Bee, or any of his agents, had any involvement in the advertisement. EFRG denies that the television advertisement was made for the purpose of influencing Senator Bee's congressional campaign. Therefore, the Commission should find that EFRG did not make an unlawful, in-kind contribution to Senator Bee's campaign.

**C. EFRG Was Not Required To File With The Commission Because It Is Not A Political Committee And Has Not Contributed To Any Campaigns.**

EFRG has not violated the Act by failing to file as a political committee. EFRG is not a political committee. Pursuant to the Act, a "political committee" is defined in part as any committee, club, association, or other group of persons that makes expenditures in excess of \$1,000.00 in a calendar year for the purpose of influencing a federal election. See 2 U.S.C. § 431(4)(A) (emphasis added). In order to trigger political committee status, the Act defines "contributions" and "expenditures" as "anything of value made by any person for the purpose of influencing any election for Federal office." See 2 U.S.C. §§ 431(8)(A)(i), (9)(A)(i) (emphasis added).

Again, the DCCC's allegations on this issue are based on conjecture and nothing more. As stated above, the television advertisement was not a coordinated communication. It was not an in-kind contribution to Senator Bee's congressional campaign. EFRG has never made any contributions to his congressional campaign. It has never made any expenditures for the purpose of influencing any federal elections. As a result, EFRG is not a political committee and was not required to report its lobbying efforts and issue advocacy to the Commission.

**D. For The Reasons Stated Above, The Television Advertisement Did Not Need Disclaimers.**

The Commission should agree with EFRG that the television advertisement did not require disclaimers. Disclaimers are required for (1) public communications made by political committees, (2) public communications that expressly advocate the election or defeat of a particular candidate, (3) public communications that solicit contributions, and (4) electioneering communications. See 11 C.F.R. § 110.11(a). EFRG's television advertisement does not fit into any of these categories.

29044254506

Jeff S. Jordan, Esq.

June 9, 2008

Page 6

As stated above, EFRG is not a political committee in spite of the DCCC's unfounded mischaracterization. The television advertisement does not expressly, or even impliedly, advocate the election of Senator Bee to Congress. There is no doubt that the television advertisement does not solicit contributions. Moreover, the television commercial was not aired within the required time frame to qualify as an electioneering communication. Hence, there is no basis to suggest that the television advertisement is a type of communication that must include disclaimers.

A television advertisement that discusses proposed legislation to increase teacher compensation, and which acknowledges the state senator who sponsored the legislation, is not a communication that falls under the Act or its requirement for disclaimers. Due to the fact that EFRG's television advertisement was not a campaign advertisement for Senator Bee, EFRG did not violate the law by failing to include any disclaimers.

### **III. Conclusion: The Complaint Should Be Dismissed.**

It is apparent that EFRG is having its legitimate and sincere actions twisted by the DCCC for political gain. EFRG does not have "a horse in the race." It is not affiliated with any congressional campaign. It is not trying to influence any federal elections. EFRG is trying to get more money into the pockets of teachers throughout Arizona. EFRG had invested a lot of resources into the legislation that became Senate Bill 1488. Senator Bee's desire to sponsor the bill and champion it through the Arizona Senate is commendable.

The bill's success in the Senate was not the end. More lobbying and more public exposure of the bill is still necessary. For these reasons, EFRG prepared the television advertisement, which referred to Senator Bee, and the mailers, which referred to Senator Aboud. These communications were prepared and disseminated to advocate for an issue, not any candidates for Congress. EFRG denies that it coordinated the television advertisement with Senator Bee. EFRG has made no contributions of any form to Senator Bee's congressional campaign. The DCCC's complaint lacks any evidentiary support. Speculation and unfounded allegations are insufficient to establish violations of the Act.

29044254507

Jeff S Jordan, Esq  
June 9, 2008  
Page 7

The DCCC's complaint should be dismissed and the Commission should find no reason to believe that EFRG has violated any federal election laws

Sincerely,

THE LEDBETTER LAW FIRM, P L C



Shloh K Hogard

SKH/aes

cc Education Finance Reform Group

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**EXHIBIT "D"**

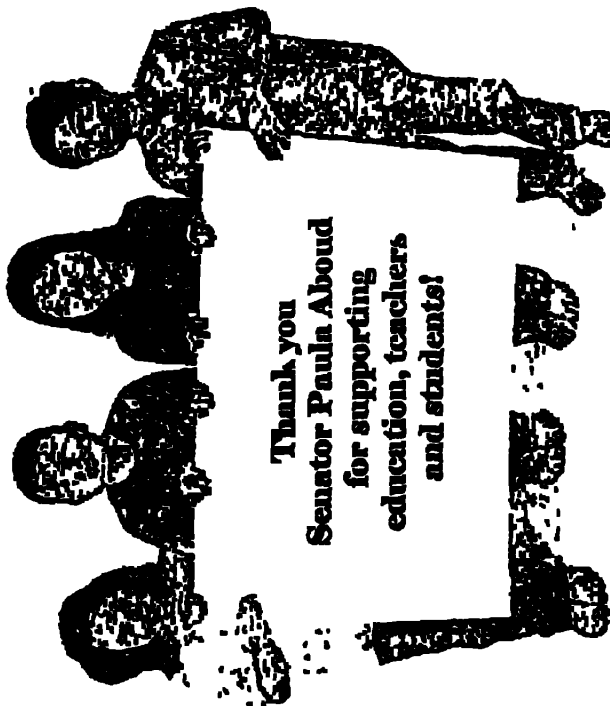


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If you extend the opportunity to all teachers to receive a pay raise, it will motivate teachers to excel. Teachers are willing to do the work, but they are underpaid and should be rewarded for their commitment and dedication to educating our students.

Senator Paula Aboud



Thank you  
Senator Paula Aboud  
for supporting  
education, teachers  
and students!

Supporting SB1488 should be as easy as saying your ABC's...

**Senator Paula Aboud** understands the need to pay teachers more who excel at achieving academic success.

Performance based pay will improve the quality of Arizona's teachers and student achievement. Districts who currently receive funding show

Higher test scores

Lower drop-out rates

Higher graduation rates

**It's about kids!**

Senator Aboud understands that outstanding educators produce outstanding students

**THANK YOU SENATOR ABOUD**